

Remarks

No claims have been amended.

1. Information Disclosure Statement

Applicants request consideration of an Information Disclosure Statement being filed herewith that includes a copy of observations made by a third party concerning patentability of the claimed invention in the corresponding European Patent Application No. 04768997.1

2. Updated Table of Commonly Assigned Applications

The Examiner's attention is called to the following updated table of U.S. patents and pending applications of Applicants' assignee that may be considered as technically related. The current status of each application as reported in the PAIR database is given in the right-hand column. Each of the published US applications and PCT applications is listed on a form PTO-1449 attached to an Information Disclosure Statement being submitted herewith or has been listed on a form PTO-1449 attached to a previously filed Information Disclosure Statement.

It is assumed that the Examiner has ready electronic access to each of the listed U.S. applications, but the undersigned will provide a copy of any document from these files if requested by the Examiner.

| U.S. Serial No. Filing Date | Inventor | U.S. Patent No. Issue Date | PCT Pub. No. PCT Pub. Date | Current Status |
|--------------------------------|---------------------------|-------------------------------|----------------------------------|----------------|
| 09/913,539 December 7, 2001 | Nigel P. Taylor et al. | 6,844,437 January 18, 2005 | WO 00/49014 August 24, 2000 | Granted |
| 10/610,700 July 2, 2003 | Nigel P. Taylor et al. | 6,784,171 August 31, 2004 | WO 00/49014 August 24, 2000 | Granted |
| 10/885,244 July 7, 2004 | Nigel P. Taylor et al. | | WO 00/49014 August 24, 2000 | Abandoned |
| 10/483,430 January 12, 2004 | Akio Matsushita et al. | 7,304,156 December 4, 2007 | WO 03/006439 January 23, 2003 | Granted |

| U.S. Serial No. Filing Date | Inventor | U.S. Patent No. Issue Date | PCT Pub. No. PCT Pub. Date | Current Status |
|---------------------------------|--------------------------|--------------------------------------|-----------------------------------|---|
| 11/933,626 November 1, 2007 | Akio Matsushita et al. | US 20080058520 March 6, 2008 | WO 03/006439 January 23, 2003 | Assigned to Examiner Venkataraman Balasubramanian in GAU 1624; Response to Non-Final Office Action Filed 03-15-2010 |
| 10/275,092 November 1, 2002 | Andrew J. Blacker et al. | 7,157,255 January 2, 2007 | WO 01/85975 November 15, 2001 | Granted |
| 11/412,047 April 27, 2006 | Andrew J. Blacker et al. | 7,416,865 August 26, 2008 | WO 01/85975 November 15, 2001 | Granted |
| 12/178,424 July 23, 2008 | Andrew J. Blacker et al. | US 20080280336 November 13, 2008 | WO 01/85975 November 15, 2001 | Assigned to Examiner Herbert J. Lilling in GAU 1657; Notice of Allowance Mailed 01-27-2010 |
| 10/524,235 August 18, 2005 | John Horbury et al. | 7,511,140 March 31, 2009 | WO 04/014872 February 19, 2004 | Granted |
| 12/371,359 February 13, 2009 | John Horbury et al. | US 20090286819 November 19, 2009 | WO 04/014872 February 19, 2004 | Assigned to Examiner Venkataraman Balasubramanian in GAU 1624; Non Final Action Mailed 01-15-2010 |
| 10/558,390 February 29, 2008 | Jeffrey N. Crabb et al. | US 20080221323 September 11, 2008 | WO 04/108691 December 16, 2004 | Assigned to Examiner Venkataraman Balasubramanian in GAU 1624; Ready for Examination |
| 10/571,254 March 9, 2006 | Rebecca J. Booth et al. | US 20060293355 December 28, 2006 | WO 05/023779 March 17, 2005 | Abandoned |
| 12/615,935 November 10, 2009 | Rebecca J. Booth et al. | | WO 05/023779 March 17, 2005 | Application Undergoing Preexam Processing |
| 10/572,635 March 17, 2006 | Simon N. Black et al. | US 20070105882 May 10, 2007 | WO 05/028450 March 31, 2005 | Assigned to Examiner Venkataraman Balasubramanian in GAU 1624; Non Final Action Mailed 11-06-2009 |
| 10/333,351 January 17, 2003 | Jacob H. Kooistra et al. | 6,870,059 March 22, 2005 | WO 02/06266 January 24, 2002 | Granted |
| 11/053,090 February 7, 2005 | Jacob H. Kooistra et al. | 7,642,363 January 5, 2010 | WO 02/06266 January 24, 2002 | Granted |
| 12/625,156 November 24, 2009 | Jacob H. Kooistra et al. | | WO 02/06266 January 24, 2002 | Application Undergoing Preexam Processing |

| U.S. Serial No. Filing Date | Inventor | U.S. Patent No. Issue Date | PCT Pub. No. PCT Pub. Date | Current Status |
|---------------------------------|------------------------------|------------------------------------|-----------------------------------|---|
| 10/537,723 June 7, 2005 | Lee Newton et al. | 7,524,955 April 28, 2009 | WO 04/054986 July 1, 2004 | Granted |
| 12/404,575 March 16, 2009 | Lee Newton et al. | US 20090264654 October 22, 2009 | WO 04/054986 July 1, 2004 | Assigned to Examiner Erich A. Leeser in GAU 1624; Ready for Examination |
| 10/518,164 July 25, 2005 | Hermanus C. Bakel Van et al. | 7,442,811 October 28, 2008 | WO 03/106447 December 24, 2003 | Granted |
| 10/501,250 December 6, 2004 | Robert P. Hof | US 20050090674 April 28, 2005 | WO 03/059901 July 24, 2003 | Assigned to Examiner Taofiq A. Solola in GAU 1625; Issue Fees Paid 03-30-2010 |
| 11/994,925 January 7, 2008 | Michael Butters et al. | | WO 07/007119 January 18, 2007 | Examiner unassigned; Preliminary Amendment filed April 16, 2010 |
| 11/793,418 June 20, 2007 | Michael Butters et al. | US 20080207903 August 28, 2008 | WO 2006/067456 June 29, 2006 | Assigned to Examiner Venkataraman Balasubramanian in GAU 1624; Response to Restriction Requirement Filed 02-16-2010 |
| 11/948,615 November 30, 2007 | Steven Robert Lenger | US 20080188657 August 7, 2008 | | Assigned to Examiner Venkataraman Balasubramanian in GAU 1624; Ready for Examination |

3. Restriction Requirement

In response to the restriction requirement, Applicants elect with traverse the invention of Group I as defined by the Examiner – *i.e.*, a process for the manufacture of the calcium salt of (E)-7-[4-(4-fluorophenyl)-6-isopropyl-2-[methyl(methylsulfonyl)amino]pyrimidin-5-yl](3R,5S)-3,5-dihydroxyhept-6-enoic acid. Claims 1-5 encompass this invention.

The restriction is traversed as it pertains to Groups I, II and III. Claim 1 recites a process involving the use of intermediate crystalline compounds of formulae (7) and (8), while claims 6-9 recite a crystalline compound of formula (7) and claims 10-11 recite a crystalline compound of formula (8). Accordingly, Applicants submit that claims 1-5 (Group I), claims 6-9 (Group II) and claims 10-11 (Group III) form a single inventive step. Applicants point out that the Written

Opinion for the corresponding PCT application (PCT GB2004/004481) supports Applicants' request for rejoinder of Groups I-III by not finding a lack of unity for substantially similar claims.

The Examiner indicates that restriction is proper when the inventions are distinct such that they require a different field of search and/or the prior art applicable to one invention would not be applicable to another invention. Applicants point out that in this case, the compounds of formulae (7) and (8) are specifically depicted intermediates in the recited process of claim 1. Therefore, Applicants presume that in assessing the patentability of claim 1, the Examiner would necessarily consider prior art that relates to the compounds of formulae (7) and (8). Accordingly, Applicants respectfully request that the Examiner rejoin Groups II (claims 6-9) and III (claims 10-11) with Group I (claims 1-5).

Except for issues payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or to credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **constructive petition for extension of time** in accordance with 37 C.F.R. 1.136(a)(3).

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